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Remarks

The present response is to the Office Action mailed the above-referenced case on November 23, 2005. Claims 1-28 are standing for examination. The Examiner has rejected claims 1, 3-8, 12-22, 24, 26 and 27 under 35 U.S.C. 102(e) as being anticipated by Basso of record. Claims 2, 9-11 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Basso as applied to claims 8 and 24, and further in view of Zauman of record. Claims 23 and 28 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Basso as applied to claims 1 and 24, and further in view of Aviani of record.

Applicant has again carefully studied the references provided by the Examiner, and the Examiner's rejections and statements of the instant Office Action. In response applicant amends the claims to more particularly point out and distinctly claim the subject matter of applicant's invention regarded as patentable. Applicant further provides arguments to clearly establish that the claims as amended unarguably distinguish applicant's invention over the prior art presented by the Examiner.

Applicant to amends the claims more particularly recite a control system for monitoring data flow wherein a plurality of cost values are assigned for a single path between network nodes, each cost value independent of the others assigned on a particular path, and each associated with a specific destination. As an aid in prosecution applicant reproduces claim 1 below for convenience.

Claim 1 as amended now recites:

1. (Currently amended) A control system for controlling data flow over data paths on a data-packet-network comprising:

a network monitoring system for monitoring network performance parameters;

a network access system for accessing specific nodes in the network; and

a control software executable on the network access system for assigning and changing forwarding cost values for selected paths between neighboring nodes in the

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network;

characterized in that a network administrator monitoring the network or portion thereof uses the network access system and control software to assign and implement two or more cost values for a single path between network nodes, each cost value independent of the others assigned on a particular path, and each associated with a specific destination, enabling load balancing of data traveling through the network.

Applicant's claim 1 has been amended herein to recite wherein a plurality of cost values are assigned for a single path between network nodes, each cost value independent of the others assigned on a particular path, and each associated with a specific destination.

Applicant argues that this is nowhere taught or suggested in Basso. Claims 8 and 24 are applicant's method claims for altering an established course of a data path, in accordance with the limitations of claim 1. Therefore, as amended and as argued above by applicant on behalf of claim 1, claims 8 and 24 are also then patentable over the primary reference of Basso.

Claims 2 and 9-11 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Basso as applied to claims, 8 and 24, and further in view of Zauman, and claims 23 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Basso as applied to claims 1 and 24, and further in view of Aviani.

All of the claims rejected above are depending claims, and the above secondary references are relied upon by the examiner to teach or suggest well known aspects in the art of endeavor. As applicant strongly believes that Basso has been demonstrated to be deficient in teaching or suggesting, as required in a *prima facie* rejection, all of the limitations of applicant's base claims as amended herein and as supported in the specification of the claimed invention, particularly the limitation of multiple cost values each associated with a particular destination, and applied according to data destination, depending claims 2-7, 9-23 and 25-28 are then patentable on their own merits, or at least as depended from a patentable claim.

As all of the claims standing for examination have been shown to be patentable over the art of record, applicant respectfully requests reconsideration, and that the present

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case be passed quickly to issue. If there are any time extensions needed beyond any extension specifically requested with this response, such extension of time is hereby requested. If there are any fees due beyond any fees paid with this amendment, authorization is given to deduct such fees from deposit account 50-0534.

Respectfully Submitted,
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